IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/10/2003

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THE HONOURABLE MR. JUSTICE V.KANAGARAJ

CRL.O.P.No.23396 of 2003
and
CRL.M.P.Nos.6628 and 6629 of 2003

R. Ganesan ... Petitioner

-Vs-

G. Jayaseelan,
Special Officer,
Thiruvalangadu Co-Operative
Primary Agriculture and Rural
Development Bank Ltd.,
Thiruvalangadu,
Tiruttani Taluk,
Tiruvallur District. ... Respondent

Criminal Original petition is filed under Section 482 Cr.P.C
as stated therein.

For petitioner : Mr. C. Ravichandran

For Respondent: Mr. M. Mahalingam
Government Advocate

:O R D E R

The above Criminal Original Petition has been filed under
Section 4 82 of Cr.P.C. to call for the records pertaining to C.C. No.219 of
20 03 pending on the file of the Judicial Magistrate, Tiruttani and quash the
same.

2. The petitioner has stated in his petition above that
he started a weaving business as a small scale industry at Kelambakkam
Village, Thiruvalangadu, Tiruttani Taluk in the year 1996 borrowing a sum of
Rs.98,000/- from the respondent bank on 11.6.1996 for purchasing two power
looms and executed necessary security documents apart from creating an
equitable mortgage over his house at Kavarai Street, Kelambakkam, Tiruttani
Taluk; that apart from that the petitioner also created a hypothecation deed
hypothecating the two power looms referred to above for repayment of the said

amount to the bank; that the petitioner was paying the instalments regularly and due to slump in business, the petitioner was not in a position to repay the loan; that in fact, the petitioner incurred heavy loss in the business, which was also intimated to the bank; that with the knowledge and consent of the bank official, the petitioner was forced to sell his two power looms in question and deposited the sale proceeds of Rs.30,000/- on 7.3.2000 in order to prevent further deterioration of the two power looms in question; that the petitioner paid a sum of Rs.15,000/- on 15.4.2002 and subsequently during the time when the petitioner has been paying the instalments, the petitioner received a lawyer's notice dated 24.2 .2003 from the respondent bank and the said lawyer's notice was duly replied on 14.3.2003 through his lawyer; that in fact even after the reply to the said notice, the petitioner has been paying amounts to the respondent bank and while so the petitioner received summons from the Judicial Magistrate at Tiruttani along with a complaint copy filed by the respondent bank charging the petitioner under Sec.158 of the Tamil Nadu Co-Operative Societies Act and also under Section 417 of IPC for having sold the hypothecated power looms without written consent of the bank and hence the petitioner has come forward to file the above Criminal Original Petition for the relief extracted supra.

3. It is an admitted case on the part of the petitioner that he borrowed a sum of Rs.97,800/- as a loan under NFSL No.27 for the purchase of two power looms not only mortgaging his immovable properties but also hypothecating the two power looms to the Primary Co-Operative Agricultural and Rural Development Bank, the respondent herein.

4. It is further an admitted case on the part of the petitioner that the two power looms he purchased on loan supplied by the respondent Co-Operative Bank hypothecating the same with the respondent, has been sold for a sum of Rs.30,000/- to a third party.

5. However, the case of the respondent/complainant is that the sale of the hypothecated power looms by the petitioner was without prior permission from them as laid down under Section 124-A of the Tamil Nadu Co-Operative Societies Act and without their knowledge. On the other hand, the petitioner would state that only with prior permission and with the knowledge of the respondent officials, the sale of the power looms was done and also the sale proceeds of Rs.30,000/- had been paid only as part payment of the loan with the respondent on 7.3.20 00 and therefore, no offence has been committed on his part much less under Section 158 of the Tamil Nadu Co-Operative Societies Act and Section 417 of the IPC and hence would pray to quash the said case registered on the file of the Judicial Magistrate, Tiruttani in CC No.2 19 of 2003.

6. During the arguments, the learned counsel appearing on behalf of the petitioner would submit a judgment of the Hon'ble Apex Court reported in AIR 1996 Supreme Court 2452, (Central Bureau of Investigation, SPE, SIU (X), New Delhi, Appellant vs. Duncans Agro Industries Ltd., Calcutta, Respondent) wherein also the allegation of the complainant was that the goods in respect of which floating charge was created in favour of the banks and the same were disposed of by the debtor Company on which an offence

of criminal breach of trust was registered in which on criminal revision filed by the debtor company before the High court, the same came to be allowed testifying the validity on which the criminal appeals have been filed before the Hon'ble Apex Court in which the Hon'ble Apex Court has held in the following manner:

"29. In the facts of the case, it appears to us that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the concerned Companies. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating. It is also to be noted that long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs. Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, we do not think that the said complaints should be pursued any further. In our view, proceeding further with the complaints will not be expedient. In the special facts of the case, it appears to us that the decision of the High Court in quashing the complaints does not warrant any interference under Article 136 of the Constitution. We, therefore, dismiss these appeals."

7. On the other hand, learned Government Advocate would argue to the effect that the case decided by the above judgment was a case under Section 406 of the IPC, but here, a specific offence has been committed under the Tamil Nadu Co-Operative Societies Act in violation of Section 124-A of the Act, for which the petitioner becomes liable to be prosecuted and punished under Section 158 of the Tamil Nadu CoOperative Societies Act and under Section 417 of the IPC and therefore, would seek to dismiss the above petition.

8. It is relevant to point out that any specific offence committed under a special Act such as Tamil Nadu Co-Operative Societies Act, 19 83, could be prosecuted and punished under the relevant penal provisions of the said Act whereas Section 417 of the IPC has also been conjoined in the charge sheet for which also, a case has been registered and taken on file by the trial Court.

9. It could be fairly stated that IPC section is very well covered by the judgment cited supra and therefore, it has become relevant to consider whether the case could be entertained and taken on file for being convicted and sentenced under of the Tamil Nadu Co-Operative Societies Act,

1983, which is the only point for consideration to the context of the case in hand.

10. The definite case of the respondent/complainant is that the offence has been committed under Section 124-A of the Tamil Nadu CoOperative Societies Act and the same is punishable under Section 158 of the Act whereas under section 124-A any portion hypothecated to the Co-Operative Society cannot be sold "without prior permission from the bank in writing". Though the petitioner comes forward to allege that he has sold the power looms only with prior consent of the bank further paying the said amount as part payment of the loan amount as on 7.3.2000, still nothing in writing seems to have been obtained nor produced before this Court as it is warranted under Section 124-A of the Tamil Nadu Co-Operative Societies Act, 1983. Therefore, the prosecution launched under Section 158 of the Act in the above circumstances could only be held by this Court as just and proper and legal. Therefore, at this score, this Court cannot cause its interference to quash the proceedings and even if what the petitioner says is true, it is upto the trial Court to take a decision based on the materials made available therein and therefore, in the circumstances, this Court is left with no choice but to dismiss the above Criminal OP and hence the following order:
In result,
(i) the above Criminal OP is without merit and the same is dismissed.

(ii) personal attendance of the petitioner before the trial Court on all future dates of hearing is dispensed with and he is permitted to appear by pleader barring on those occasions of supply of copies, preliminary questioning, final questioning under Section 313 Cr.P.C., delivery of the judgment etc.,. When his personal attendance would become
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indispensable on such occasions alone, the trial Court will be at liberty to summon the petitioner to cause his personal attendance in the manner required under Section 205 of the Cr.P.C.
(iii) Consequently, Crl.MP. Nos.6628 and 6629 of 2003 are closed.

Index: yes
Internet: yes

asvm

To
1. The Judicial Magistrate,
Tiruttani.

2. G. Jayaseelan,
Special Officer,
Thiruvalangadu Co-Operative
Primary Agriculture and Rural
Development Bank Ltd.,

Thiruvalangadu,
Tiruttani Taluk,
Tiruvallur District.